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9  
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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN JOSE DIVISION  
14

15 VERIGY US, INC, a Delaware Corporation

16 Plaintiff,

17 vs.

18 ROMI OMAR MAYDER, an individual;  
WESLEY MAYDER, an individual; SILICON  
19 TEST SYSTEMS, INC., a California Corporation;  
and SILICON TEST SOLUTIONS, LLC, a  
20 California Limited Liability Corporation,  
inclusive,  
21

22 Defendants.  
23  
24

25 AND RELATED CROSS ACTIONS  
26  
27  
28

Case No. C07 04330 RMW (HRL)

**VERIGY'S OBJECTIONS TO EVIDENCE  
SUBMITTED BY DEFENDANTS' IN  
SUPPORT OF MOTIONS FOR  
SUMMARY ADJUDICATION AND FOR  
MODIFICATION OF PRELIMINARY  
INJUNCTION**

Date: September 5, 2008

Time: 9:00 am

Ctrm.: 6

Judge: Hon. Ronald M. Whyte

Complaint Filed: August 22, 2007

Trial Date: None Set

Plaintiff Verigy US, Inc. (“Verigy”) hereby objects to the following evidence submitted by defendants in support of their motion for summary adjudication and for modification of preliminary injunction currently set for hearing on September 5, 2008 before the above-named Court.

**A. DECLARATION OF RICHARD BLANCHARD IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION, ETC. (Docket No. 262)**

**OBJECTION NO. 1:**

Verigy objects to and moves to strike the following portion of Paragraph 5 of the Blanchard Declaration (p.2:5-9) which states:

*“Given that I had never received a copy of the complete TRO prior to July 2, 2008, it is unlikely that even had I been asked to do so that I would have been in a position to give technical advice about the scope of the purported trade secrets that were or were not covered, nor the technical activities that were or were not enjoined.”*

**Grounds for Objection:**

Verigy objects to and moves to strike the sentence of the paragraph because it is made in violation of Civil L.R. 7-5(b) which provides that a “statement made on information and belief must state the basis therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.” It is also objectionable because “a hypothetical answer based on facts which are not shown to exist is not evidence.” *Heard v. U.S.* 348 F.2d 43, 46, n.5 (D.C. Cir. 1964). Moreover it is objectionable because “it is well established by the weight of authority that expert testimony may not be received unless it appears that the witness is in possession of such facts as would enable him to express a reasonably accurate conclusion as distinguished from a mere guess or conjecture.” *Gilbert v. Gulf Oil Corp.* 175 F.2d 705, 709 (4<sup>th</sup> Cir. 1949).

The opinion is conjecture, based on speculation as to what the witness might have done under a certain set of assumed facts. What Dr. Blanchard might have done, over a year ago, had Defendants’ prior attorneys presented him with the ‘complete TRO,’ is, a year later, speculation. There is no showing that the facts underlying his assumption exist. Indeed, Dr. Blanchard admits the opposite is true. Dr. Blanchard did not see the complete TRO so cannot testify now as to what

1 he would have done then.

2 **OBJECTION NO. 2**

3 Verigy objects to and moves to strike the following portion of Paragraph 9 of the Blanchard  
4 Declaration (p.5:9-15) which states:

5 *“Therefore, I feel that, in working with potential customers such as the Specific STS*  
6 *Potential Customer, Romi Mayder would have needed less than this four-to-six month range of*  
7 *time to independently research, develop, determine, and otherwise compile all of the information*  
8 *in what I understand to be the product specification that would be submitted to a chip*  
9 *manufacturer for the Flash enhancer product from public and readily ascertainable sources and*  
10 *customer requirements (from companies such as the Specific STS Potential Customer) without*  
11 *relying upon any of Verigy’s claimed trade secret information.”*

12 **Grounds for Objection:**

13 Verigy objects to and moves to strike the sentence of the paragraph because it is made in  
14 violation of Civil L.R. 7-5(b) which provides that a “statement made on information and belief  
15 must state the basis therefore. An affidavit or declaration not in compliance with this rule may be  
16 stricken in whole or in part.” Moreover, it is objectionable because “it is well established by the  
17 weight of authority that expert testimony may not be received unless it appears that the witness is  
18 in possession of such facts as would enable him to express a reasonably accurate conclusion as  
19 distinguished from a mere guess or conjecture.” *Gilbert v. Gulf Oil Corp.* 175 F.2d 705, 709 (4<sup>th</sup>  
20 Cir. 1949). The declaration itself must contain facts showing the declarant’s connection with the  
21 matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United*  
22 *States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999).

23 Here, Dr. Blanchard has not established what evidence from the STS Potential Customer he  
24 reviewed which would lead him to believe that the customer was “particularly motivated” such as  
25 to show the referenced time frame needed by Mayder is accurate. (*See* Blanchard Declaration, ¶ 9,  
26 p. 5:6-9). In the absence of such evidence, this opinion in Dr. Blanchard’s declaration lacks  
27 foundation and must be excluded.

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**OBJECTION NO. 3**

Verigy objects to and moves to strike Paragraph 10 of the Blanchard Declaration (p.5:16-6:1) (Text omitted)

**Grounds for Objection:**

Verigy objects to and moves to strike the paragraph because it is made in violation of Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any statement made on information and belief must state the basis therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.” The declaration itself must contain facts showing the declarant’s connection with the matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999). Moreover, “a witness should not ordinarily be allowed to express an opinion upon a subject matter concerning which he is not an expert.” *Phillips v. U.S.* 356 F.2d 297, 307 (9<sup>th</sup> Cir. 1965); F.R.E. 702. It is also objectionable because “it is well established by the weight of authority that expert testimony may not be received unless it appears that the witness is in possession of such facts as would enable him to express a reasonably accurate conclusion as distinguished from a mere guess or conjecture.” *Gilbert v. Gulf Oil Corp.* 175 F.2d 705, 709 (4<sup>th</sup> Cir. 1949). Verigy further objects that the evidence is cumulative and should be excluded pursuant to F.R.E 403 (exclusion of cumulative or relevant evidence based on grounds of prejudice, confusion or waste of time).

Dr. Blanchard is not a damages expert nor has he established that he has the requisite knowledge, skill, experience, training or education to testify as to royalty rates in the context of the technology at issue here. His declaration is devoid of any statements as to his qualifications to testify on damages, other than the statement that he has “been involved in projects and cases in which royalty rates” have figured. (Blanchard Declaration, p. 5:16-17). He does not define ‘projects’ or ‘cases,’ nor what his role was, much less state his particular expertise at establishing or defining royalty rates. In the absence of such qualifications, this entire paragraph should be stricken on that basis and under F.R.E. 403 on the grounds that any probative value of the

1 evidence is non-existent and outweighed by the prejudice to Verigy of such unsubstantiated  
2 testimony.

3 **B. DECLARATION OF GARY MAYDER IN SUPPORT OF MOTION FOR**  
4 **SUMMARY ADJUDICATION, ETC. (Docket No. 261-19)**

5 **OBJECTION NO. 4:**

6 Verigy objects to and moves to strike the entire Declaration of Gary Mayder (Text  
7 omitted)

8 **Grounds for Objection:**

9 Verigy objects to and moves to strike the declaration because it is made in violation of  
10 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as  
11 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.  
12 Any statement made on information and belief must state the basis therefore. An affidavit or  
13 declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further  
14 objects to the declaration and the statements within because they are irrelevant, in violation of  
15 F.R.E. 402. Verigy further objects to the statements because they constitute opinion testimony, do  
16 not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d  
17 1237, 1251 (9<sup>th</sup> Cir. 2000). The declaration itself must contain facts showing the declarant’s  
18 connection with the matters stated therein, establishing the source of his or her information.  
19 F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999). Moreover, “a  
20 witness should not ordinarily be allowed to express an opinion upon a subject matter concerning  
21 which he is not an expert.” *Phillips v. U.S.* 356 F.2d 297, 307 (9<sup>th</sup> Cir. 1965); F.R.E. 702. Verigy  
22 further objects that the evidence is cumulative and should be excluded pursuant to F.R.E 403  
23 (exclusion of cumulative or relevant evidence based on grounds of prejudice, confusion or waste  
24 of time).

25 The declaration gives Mr. Gary Mayder’s family history of education and experience, as  
26 well as a limited view into Defendant Romi Mayder’s work experience. The conclusion (i.e.,  
27 opinion) of Gary Mayder is that his son is capable of handling complex electrical engineering  
28 assignments. Since it does not reference the trade secrets at issue here, it is a conclusion in a

1 vacuum. It is irrelevant. Initially, the proffered testimony does not does not have ‘any tendency to  
 2 make the existence of any fact that is of consequence to the determination of the action more  
 3 probable or less probable’ than without it. F.R.E. 401. Nothing to which Gary Mayder testifies  
 4 makes it more or less probable that material facts concerning Defendants’ misappropriation of  
 5 trade secrets and breach of contract with Verigy, *inter alia*, occurred. Ostensibly, the testimony  
 6 might bear some relationship to the amount of time it would take Defendant Mayder to develop  
 7 the Flash Enhancer product. But, the testimony does not have the appropriate factual or expert  
 8 basis. There is no statement by Gary Mayder that he reviewed the technology at issue here, nor  
 9 that he has the qualifications to opine about them. Even if he did have the requisite foundation to  
 10 so testify, the evidence is cumulative. Dr. Blanchard also proffered his opinion on Defendant  
 11 Mayder’s abilities. As such, the entire declaration should be stricken.

12 **C. DECLARATION OF ROMI MAYDER IN SUPPORT OF MOTION FOR**  
 13 **SUMMARY AJDUDICATION, ETC. (Docket No. 261-2)**

14 **OBJECTION NO. 5:**

15 Verigy objects to and moves to strike paragraphs 2-4 of the Declaration of Romi Mayder  
 16 (Text omitted)

17 **Grounds for Objection:**

18 Verigy objects to and moves to strike the paragraphs because the statements within are  
 19 irrelevant, in violation of F.R.E. 402. Verigy further objects that the evidence is cumulative and  
 20 should be excluded pursuant to F.R.E 403 (exclusion of cumulative or relevant evidence based on  
 21 grounds of prejudice, confusion or waste of time).

22 The paragraphs give Defendant Romi Mayder’s family history of his own education and  
 23 experience. The proffered testimony does not does not have ‘any tendency to make the existence  
 24 of any fact that is of consequence to the determination of the action more probable or less  
 25 probable’ than without it. F.R.E. 401. Nothing in these paragraphs makes it more or less probable  
 26 that material facts concerning Defendants’ misappropriation of trade secrets and breach of contract  
 27 with Verigy, *inter alia*, occurred. Neither Defendant Romi Mayder nor anyone in his family has  
 28 been disclosed as an expert such experience and qualification do not bear on any issue in the case.

1 The testimony should also be excluded as consuming too much time and having limited probative  
2 value.

3 **OBJECTION NO. 6:**

4 Verigy objects to and moves to strike certain sentences of paragraph 10 of Defendant Romi  
5 Mayder including all beginning with “*My previous lawyers at Mount & Stoekler, P.C. never*  
6 *advocated with opposing counsel or otherwise with the Court that the Protective Order*  
7 *designations be lifted so that I could be allowed to read the entire unredacted TRO and certainly*  
8 *not with all of the referenced materials*” and ending with “*Obviously, this comes far too late in this*  
9 *case and it should have been allowed months if not nearly a year ago.*” (p.3:3-22)

10 **Grounds for Objection:**

11 Verigy objects to and moves to strike these sentences within the declaration because they  
12 are made in violation of Civil L.R. 7-5(b) which provides that a “declaration may only contain  
13 facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid  
14 conclusions and argument. Any statement made on information and belief must state the basis  
15 therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or  
16 in part.” Verigy further objects to the statements because they constitute opinion testimony, do  
17 not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d  
18 1237, 1251 (9<sup>th</sup> Cir. 2000). Verigy further objects that much of the testimony is inadmissible  
19 hearsay. F.R.E. 801. Verigy further objects to the statements because they are speculative and  
20 should be excluded pursuant to F.R.E 403 (exclusion of relevant evidence based on grounds of  
21 prejudice, confusion or waste of time).

22 Mayder largely testifies outside of his own personal knowledge, about what others did. He  
23 attempts to testify about what his attorneys did as it relates to Verigy’s counsel, when his attorneys  
24 are best positioned to so testify based on personal knowledge. (Mayder Declaration, p.3:2-9; 18-  
25 22). Mr. Mayder’s speculation on what he may or may not have done in certain circumstances is  
26 just that: speculation which is also irrelevant. (Id., p.3: 9-17). The testimony should also be  
27 excluded as consuming too much time and having limited probative value.

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**OBJECTION NO. 7:**

Verigy objects to and moves to strike paragraph 12 of Defendant Romi Mayder (Text Omitted). (p.4:11-16).

**Grounds for Objection:**

Verigy objects to and moves to strike these sentences within the declaration because they are made in violation of Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any statement made on information and belief must state the basis therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further objects to the statements because they constitute opinion testimony, do not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9<sup>th</sup> Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999). Verigy further objects to the statements because they are speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant evidence based on grounds of prejudice, confusion or waste of time).

Mr. Mayder should not be permitted to testify about his past attorney’s motivations, nor to those of Verigy’s counsel. Such testimony is speculative and irrelevant. His conclusive statement that he has “not violated the Protective Order” is without foundation and calls for a legal conclusion. (Mayder Declaration, p. 4:4-5). Mayder is not qualified to so testify. He cannot testify as to his understanding of “how the Protective Order has been used by” Verigy because this is at best speculative ramblings of a non-lawyer on matters of legal strategy, and at worst inappropriate and unfounded argument in the guise of ‘testimony.’ (Id., p.4:5-9). Mayder cannot testify as to what the motivations of Verigy and its counsel were and have been in this litigation. (Id., p.4:5-16). If this is expert testimony, it lacks foundation and Mr. Mayder does not have the appropriate qualifications to so testify. If not, it is speculative and Mr. Mayder lacks personal knowledge to so testify. In both cases, the testimony should also be excluded as consuming too much time and having limited probative value.



**OBJECTION NO. 8:**

Verigy objects to and moves to strike paragraph 14 of Defendant Romi Mayder (Text Omitted). (p.4:17-26).

**Grounds for Objection:**

Verigy objects to and moves to strike this paragraph because it is made in violation of Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any statement made on information and belief must state the basis therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further objects to the statements because they constitute opinion testimony, do not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9<sup>th</sup> Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999). Verigy further objects that much of the testimony is inadmissible hearsay. F.R.E. 801. Verigy further objects to the statements because they are speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant evidence based on grounds of prejudice, confusion or waste of time).

There are no facts based on personal knowledge in this paragraph. Mr. Mayder should not be permitted to testify about the motivations of Verigy’s counsel. Such testimony is speculative and irrelevant. Mayder is also not qualified to so testify. He cannot testify as to his understanding of what Verigy “knows full well” because this is at best speculative ramblings of a non-lawyer on matters of legal strategy, and at worst inappropriate and unfounded argument in the guise of ‘testimony.’ If this is expert testimony, it lacks foundation and Mr. Mayder does not have the appropriate qualifications to so testify. If not, it is speculative and Mr. Mayder lacks personal knowledge to so testify. Mayder also cannot testify as to what Mr. Pasquinelli and Mount & Stoelker said about Exhibit 7 as such testimony is hearsay.

**OBJECTION NO. 9:**

Verigy objects to and moves to strike paragraph 15 of Defendant Romi Mayder (Text

1 Omitted). (p.4:27-5:4).

2 **Grounds for Objection:**

3 Verigy objects to and moves to strike this paragraph because it is made in violation of  
 4 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as  
 5 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.  
 6 Any statement made on information and belief must state the basis therefore. An affidavit or  
 7 declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further  
 8 objects to the statements because they constitute opinion testimony, do not satisfy the  
 9 requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9<sup>th</sup>  
 10 Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the  
 11 matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United*  
 12 *States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999). Verigy further objects that much of the  
 13 testimony is inadmissible hearsay. F.R.E. 801. Verigy further objects to the statements because  
 14 they are speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant evidence  
 15 based on grounds of prejudice, confusion or waste of time).

16 There are no facts based on personal knowledge in this paragraph. Moreover, Mayder  
 17 testifies as to the content of the properties window of the NDA, which violates the hearsay rule.  
 18 (F.R.E. 801). There is otherwise no foundation for Mayder to testify as to the author of the NDA.  
 19 As such the testimony should be stricken.

20 **OBJECTION NO. 10:**

21 Verigy objects to and moves to strike paragraph 16 of Defendant Romi Mayder (Text  
 22 Omitted). (p.4:27-5:4).

23 **Grounds for Objection:**

24 Verigy objects to and moves to strike this paragraph because it is made in violation of  
 25 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as  
 26 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.  
 27 Any statement made on information and belief must state the basis therefore. An affidavit or  
 28 declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further

objects to the statements because they constitute opinion testimony, do not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9<sup>th</sup> Cir. 2000). The declaration itself must contain facts showing the declarant's connection with the matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999). Verigy further objects that much of the testimony is inadmissible hearsay. F.R.E. 801. Verigy further objects to the statements because they are speculative and should be excluded pursuant to F.R.E. 403 (exclusion of relevant evidence based on grounds of prejudice, confusion or waste of time).

There are no facts based on personal knowledge in this paragraph. Mayder's testimony on Verigy's counsel's motivations is, again, argument under the guise of speculative and inadmissible expert testimony. There is no foundation for Mayder to speculate as to why he is 'convinced' on the motivations of Verigy's counsel, if such testimony was relevant, which it is not. On that basis, and its cumulative and speculative nature, such the testimony should be stricken.

#### **OBJECTION NO. 11:**

Verigy objects to and moves to strike paragraph 18 of Defendant Romi Mayder (Text Omitted). (p.5:23-28).

#### **Grounds for Objection:**

Verigy objects to and moves to strike this paragraph because it is made in violation of Civil L.R. 7-5(b) which provides that a "declaration may only contain facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any statement made on information and belief must state the basis therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part." Verigy further objects to the statements because they constitute opinion testimony, do not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9<sup>th</sup> Cir. 2000). The declaration itself must contain facts showing the declarant's connection with the matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999). Moreover, "a witness should not ordinarily be allowed to express an opinion upon a subject matter concerning which he is not an

expert.” *Phillips v. U.S.* 356 F.2d 297, 307 (9<sup>th</sup> Cir. 1965); F.R.E. 702. Verigy further objects to the statements because they are speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant evidence based on grounds of prejudice, confusion or waste of time).

There are no facts based on personal knowledge in this paragraph. The paragraph is largely argument and opinion. Mayder speculates on his and his attorneys’ course of action, “had he been allowed to see the entire unredacted TRO.” (Mayder Declaration, p.5:23). To the extent he opines on what he would have done had he seen the technical details of the trade secrets, he is speculating and testifying as an expert. He was not declared as an expert. Defendants have retained and used Dr. Robert Blanchard in this role. As such not only does the opinion exceed the scope of Mayder’s competency, but is cumulative of any testimony provided by Dr. Blanchard. In this regard, and in light of its minimal relevance, the paragraph should be stricken under F.R.E. 403 and Civil L.R. 7-5(b).

#### **OBJECTION NO. 12:**

Verigy objects to and moves to strike paragraph 19 of Defendant Romi Mayder (Text Omitted). (p.6:2-7).

#### **Grounds for Objection:**

Verigy objects to and moves to strike this paragraph because it is made in violation of Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any statement made on information and belief must state the basis therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further objects to the statements because they constitute opinion testimony, do not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9<sup>th</sup> Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999). Verigy further objects that much of the testimony is inadmissible hearsay. F.R.E. 801. Verigy further objects that much of the testimony is secondary evidence of the content of a writing. F.R.E. 1002. Verigy further objects to the

1 statements because they are speculative and should be excluded pursuant to F.R.E 403 (exclusion  
2 of relevant evidence based on grounds of prejudice, confusion or waste of time).

3 There are no facts based on personal knowledge in this paragraph. The first sentence is  
4 argument, devoid of facts. The second sentence is hearsay and evidence of the content of a  
5 declaration already submitted. The third sentence is inadmissible hearsay offered for the truth of  
6 the matter stated therein, and therefore inadmissible. This is not a statement to offer state of mind  
7 or provide context to actions in response to the statement and hence not hearsay. Notwithstanding  
8 that Mayder is now informing the Court that contents of his previous declaration are inaccurate  
9 and cannot be trusted, calling into doubt whether any of the contents of this declaration are  
10 accurate and can be trusted, Mayder offers Dan Mount's statements about Mayder's post-TRO  
11 activities for its truth – i.e. that Dan Mount said them. The final statement on use of the Protective  
12 Order by Verigy is argument at worst and at best inadmissible expert opinion on legal decisions,  
13 which is irrelevant. As it is without any probative value, it also should be excluded under F.R.E.  
14 403.

### 15 **OBJECTION NO. 13:**

16 Verigy objects to and moves to strike the final sentence of paragraph 20 of Defendant Romi  
17 Mayder which states:

18 *“The brief does not even attempt to explain to the Court that many critical documents*  
19 *referenced by the TRO were marked ‘FILED UNDER SEAL’.” (p.6:11-13).*

### 20 **Grounds for Objection:**

21 Verigy objects to and moves to strike this sentence because it is made in violation of Civil  
22 L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as much as  
23 possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any  
24 statement made on information and belief must state the basis therefore. An affidavit or  
25 declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further  
26 objects that much of the testimony is secondary evidence of the content of a writing. F.R.E. 1002.  
27 Verigy further objects to the statements because they are speculative and should be excluded  
28 pursuant to F.R.E 403 (exclusion of relevant evidence based on grounds of prejudice, confusion or

1 waste of time).

2 The sentence in question is argument, interpretation of the contents of a writing, and  
3 inadmissible hearsay. Notwithstanding that Mayder does not accurately identify the brief to which  
4 he is referring, the Court will be well aware of the content of all Defendants' submissions.  
5 Mayder's testimony summarizing and interpreting those contents is unnecessary and inadmissible.

6 **OBJECTION NO. 14:**

7 Verigy objects to and moves to strike paragraph 21 of Defendant Romi Mayder (Text  
8 Omitted). (p.6:14-23).

9 **Grounds for Objection:**

10 Verigy objects to and moves to strike this paragraph because it is made in violation of  
11 Civil L.R. 7-5(b) which provides that a "declaration may only contain facts, must conform as  
12 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.  
13 Any statement made on information and belief must state the basis therefore. An affidavit or  
14 declaration not in compliance with this rule may be stricken in whole or in part." Verigy further  
15 objects to the statements because they constitute opinion testimony, do not satisfy the  
16 requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9<sup>th</sup>  
17 Cir. 2000). The declaration itself must contain facts showing the declarant's connection with the  
18 matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United*  
19 *States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999). Moreover, "a witness should not  
20 ordinarily be allowed to express an opinion upon a subject matter concerning which he is not an  
21 expert." *Phillips v. U.S.* 356 F.2d 297, 307 (9<sup>th</sup> Cir. 1965); F.R.E. 702. Verigy further objects  
22 that much of the testimony is inadmissible hearsay. F.R.E. 801. Verigy further objects to the  
23 statements because they are speculative and should be excluded pursuant to F.R.E 403 (exclusion  
24 of relevant evidence based on grounds of prejudice, confusion or waste of time).

25 There are no facts based on personal knowledge in this paragraph. It is argument and  
26 opinion, without basis. Mayder's statement that he "believed then" that he was in compliance  
27 with the Court's TRO is belied by his own admission in the same paragraph. In subsection (a) of  
28 that paragraph Mayder admits that he had not read the entire TRO and could not state he was in

1 compliance with it as a result. There is thus no basis for his belief. In waiving the attorney-client  
 2 privilege with Mount & Stoekler, Mayder admits those attorneys told him it was opinion and legal  
 3 conclusion to state he was in compliance with TRO. Although hearsay, they provide the basis for  
 4 excluding his current statement that he believes he is now in compliance with the TRO. Such a  
 5 statement is opinion (not fact) which Mayder is not qualified to make. Having no probative value,  
 6 the paragraph should be excluded from evidence under F.R.E. 403.

7 **OBJECTION NO. 15:**

8 Verigy objects to and moves to strike paragraph 22 of Defendant Romi Mayder (Text  
 9 Omitted). (p.6:24-26).

10 **Grounds for Objection:**

11 Verigy objects to and moves to strike this paragraph because it is made in violation of  
 12 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as  
 13 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.  
 14 Any statement made on information and belief must state the basis therefore. An affidavit or  
 15 declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further  
 16 objects to the statements because they constitute opinion testimony, do not satisfy the  
 17 requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9<sup>th</sup>  
 18 Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the  
 19 matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United*  
 20 *States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999). Verigy further objects to the statements  
 21 because they are speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant  
 22 evidence based on grounds of prejudice, confusion or waste of time).

23 There are no facts based on personal knowledge in this paragraph. Mayder’s  
 24 “understanding” of who has read the unredacted TRO lacks foundation, is speculation, and is  
 25 irrelevant. In light of such irrelevance and its lack of foundation, the paragraph is also excludable  
 26 under F.R.E. 403.

27 **OBJECTION NO. 16:**

28 Verigy objects to and moves to strike paragraph 24 of Defendant Romi Mayder (Text



1 Omitted). (p.7:3-8).

2 **Grounds for Objection:**

3 Verigy objects to and moves to strike this paragraph because it is made in violation of  
 4 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as  
 5 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.  
 6 Any statement made on information and belief must state the basis therefore. An affidavit or  
 7 declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further  
 8 objects to the statements because they constitute opinion testimony, do not satisfy the  
 9 requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9<sup>th</sup>  
 10 Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the  
 11 matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United*  
 12 *States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999). Verigy further objects to the statements  
 13 because they are speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant  
 14 evidence based on grounds of prejudice, confusion or waste of time).

15 There are no facts based on personal knowledge in this paragraph. Mayder’s opinion on  
 16 whether he was in compliance with the TRO is inadmissible expert opinion and legal conclusion.  
 17 Because he admits that he did not read the complete TRO and was not informed of its contents by  
 18 prior counsel, his opinion that he previously did not violate the TRO lacks foundation, is  
 19 speculation, and is irrelevant. In light of such irrelevance and its lack of foundation, the paragraph  
 20 is also excludable under F.R.E. 403.

21 **OBJECTION NO. 17:**

22 Verigy objects to and moves to strike the following statement from paragraph 25 of  
 23 Defendant Romi Mayder which states:

24 “...which demonstrates that the general concept for the Flash Enhancer is publicly  
 25 disclosed.” (p.7:11-12).

26 **Grounds for Objection:**

27 Verigy objects to and moves to strike this paragraph because it is made in violation of  
 28 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as

1 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.  
 2 Any statement made on information and belief must state the basis therefore. An affidavit or  
 3 declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further  
 4 objects to the statements because they constitute opinion testimony, do not satisfy the  
 5 requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9<sup>th</sup>  
 6 Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the  
 7 matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United*  
 8 *States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999). Moreover, “a witness should not  
 9 ordinarily be allowed to express an opinion upon a subject matter concerning which he is not an  
 10 expert.” *Phillips v. U.S.* 356 F.2d 297, 307 (9<sup>th</sup> Cir. 1965); F.R.E. 702. Verigy further objects  
 11 that the testimony is inadmissible hearsay. F.R.E. 801. Verigy further objects to the statement  
 12 because it is speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant  
 13 evidence based on grounds of prejudice, confusion or waste of time).

14 Mayder’s statement is not one of fact, but his opinion on what the ‘recently published  
 15 patent applications and other papers’ show. (Mayder Declaration, p. 7:10-11). Because he  
 16 attempts to relay the contents of those publications in a summary, the testimony is inadmissible  
 17 hearsay. There is also no foundation for Mayder to interpret the contents of patent applications as  
 18 applied to the trade secrets in this case. Because he is not qualified to render an opinion on what  
 19 the patent applications demonstrate, the testimony exceeds the scope of the witness’ competency.  
 20 To the extent he is not competent to so testify, the evidence lacks probative value and should be  
 21 excluded under F.R.E. 403 as likely to confuse the issues and consume undue amounts of time.

#### **OBJECTION NO. 18:**

23 Verigy objects to and moves to strike paragraph 26 of Defendant Romi Mayder (Text  
 24 Omitted). (p.7:19-28).

#### **Grounds for Objection:**

26 Verigy objects to and moves to strike this paragraph because it is made in violation of  
 27 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as  
 28 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.

Any statement made on information and belief must state the basis therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further objects to the testimony as irrelevant. F.R.E. 402. Verigy further objects to the statements because they constitute opinion testimony, do not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9<sup>th</sup> Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999). Verigy further objects that much of the testimony is inadmissible hearsay. F.R.E. 801. Verigy further objects to the statements because they are speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant evidence based on grounds of prejudice, confusion or waste of time).

Mayder’s statement that his company is having financial difficulty is inadmissible as irrelevant. F.R.E. 402. His attribution of the cause of the financial difficulty is inadmissible opinion testimony which lacks foundation and exceeds the scope of Mayder’s competency. He is also not competent to testify as to what communications his attorneys have had with Verigy’s attorneys. (Mayder Declaration, p. 7:21-24). His restatement of what his Russo & Hale attorneys told him about such conversations not only waives the attorney client privilege and attorney work product protections, but is inadmissible hearsay. (Id., 7:24-27). Finally, his statement on what he believes is the intent of Verigy’s litigation strategy is unfounded speculation, as well as irrelevant. (7:27-28). Since the paragraph contains only inadmissible statements without probative value, F.R.E. 403 favors preclusion of the paragraph, which should be stricken.

#### **OBJECTION NO. 19:**

Verigy objects to and moves to strike paragraph 27 of Defendant Romi Mayder, entitled “**BOB POCHOWSKI’S CREDIBILITY**.” (Text Omitted). (p.8:2-24).

#### **Grounds for Objection:**

Verigy objects to and moves to strike this paragraph because it is made in violation of Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.

Any statement made on information and belief must state the basis therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.” The evidence is irrelevant. F.R.E. 402. Verigy further objects to the statements because they constitute opinion testimony, do not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9<sup>th</sup> Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999). Verigy further objects that much of the testimony is inadmissible hearsay. F.R.E. 801. Verigy further objects to the statements because they are speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant evidence based on grounds of prejudice, confusion or waste of time).

Verigy objects to and moves to strike Paragraph 27 of the Declaration of Romi Mayder insofar as he purports to summarize and characterize the deposition testimony of non-party Robert Pochowski. Mayder cannot testify to the contents of emails and then characterize Pochowski as a liar. Such a summary is hearsay. Also, the paragraph is improper argument masquerading as factual testimony. Because it is argument, it has no relevance. Separate and apart from relevancy issues, Mayder’s opinion that Pochowski “changed his story and is not truthful” invades the province of the fact finder.

#### **OBJECTION NO. 20:**

Verigy objects to and moves to strike paragraph 38 (28) of Defendant Romi Mayder. (Text Omitted). (p.8:26-9:18).

#### **Grounds for Objection:**

Verigy objects to and moves to strike this paragraph because it is made in violation of Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any statement made on information and belief must state the basis therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.” The evidence is irrelevant. F.R.E. 402. Verigy further objects to the statements because they constitute opinion

1 testimony, do not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v.*  
 2 *Kramer*, 200 F3d 1237, 1251 (9<sup>th</sup> Cir. 2000). The declaration itself must contain facts showing the  
 3 declarant's connection with the matters stated therein, establishing the source of his or her  
 4 information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999).  
 5 Moreover, "a witness should not ordinarily be allowed to express an opinion upon a subject matter  
 6 concerning which he is not an expert." *Phillips v. U.S.* 356 F.2d 297, 307 (9<sup>th</sup> Cir. 1965); F.R.E.  
 7 702. Verigy further objects that much of the testimony is inadmissible hearsay. F.R.E. 801.  
 8 Verigy further objects that much of the testimony is secondary evidence of the content of a  
 9 writing. F.R.E. 1002. Verigy further objects to the statements because they are speculative and  
 10 should be excluded pursuant to F.R.E 403 (exclusion of relevant evidence based on grounds of  
 11 prejudice, confusion or waste of time).

12 The entire paragraph is argument, based on Mayder's inadmissible opinions and recitation  
 13 of various writings. Mayder does not, within the declaration, lay the foundation to testify on STS'  
 14 competitors' products or Verigy's strategic partners. (Mayder Declaration, p.8:26-27, 9:2-3). He  
 15 cannot testify about what Dave McMann of Intel said, because that is inadmissible hearsay. (*Id.*,  
 16 p.8:27-9:2). Mayder cannot quote Formfactor's website: that is inadmissible hearsay and a  
 17 violation of the secondary evidence rule. (*Id.*, p.9:6-9; 9:15-17). Mayder is not qualified to opine  
 18 on Verigy's legal claims nor on whether there is a 'competing solution to the STS Flash Enhancer'  
 19 sold by a partner of Verigy. (*Id.*, p. 9:10-12). The testimony should also be excluded under  
 20 F.R.E. 403 as it lacks probative value and creates undue consumption of time.

#### 21 **OBJECTION NO. 21:**

22 Verigy objects to and moves to strike paragraph 31 (30) of Defendant Romi Mayder. (Text  
 23 Omitted). (p.9:19-28).

#### 24 **Grounds for Objection:**

25 Verigy objects to and moves to strike this paragraph because it is made in violation of  
 26 Civil L.R. 7-5(b) which provides that a "declaration may only contain facts, must conform as  
 27 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.  
 28 Any statement made on information and belief must state the basis therefore. An affidavit or

1 declaration not in compliance with this rule may be stricken in whole or in part.” The evidence is  
 2 irrelevant. F.R.E. 402. Verigy further objects to the statements because they constitute opinion  
 3 testimony, do not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v.*  
 4 *Kramer*, 200 F3d 1237, 1251 (9<sup>th</sup> Cir. 2000). The declaration itself must contain facts showing the  
 5 declarant’s connection with the matters stated therein, establishing the source of his or her  
 6 information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999).  
 7 Moreover, “a witness should not ordinarily be allowed to express an opinion upon a subject matter  
 8 concerning which he is not an expert.” *Phillips v. U.S.* 356 F.2d 297, 307 (9<sup>th</sup> Cir. 1965); F.R.E.  
 9 702. Verigy further objects that much of the testimony is inadmissible hearsay. F.R.E. 801.  
 10 Verigy further objects that much of the testimony is secondary evidence of the content of a  
 11 writing. F.R.E. 1002. Verigy further objects to the statements because they are speculative and of  
 12 limited probative value, and thus should be excluded pursuant to F.R.E 403 (exclusion of relevant  
 13 evidence based on grounds of prejudice, confusion or waste of time).

14 Mayder’s concluding paragraph is again, improper argument masquerading as testimony.  
 15 Defendants’ filings are sufficient to inform the Court as to the relief Defendants seek by way of  
 16 the motion for summary adjudication and modification of the preliminary injunction. He is further  
 17 not qualified to testify as to whether sales of his Flash Enhancer to ‘non-Verigy’ applications  
 18 would impact Verigy’s sales, as he is not an expert in damages. (Mayder Declaration, p.9:19-23).  
 19 His final statement of the declaration is a plea for the Court’s mercy with its basis in irrelevant and  
 20 unfounded conclusions. His lack of understanding of the judicial process is irrelevant to the  
 21 motion, and his reference to Verigy ‘starving’ his company is not only irrelevant, but  
 22 inflammatory. (Id., p. 9:26-38). The statements and the paragraph should be stricken on these  
 23 basis and because any probative value is minimal in light of the prejudicial nature of such  
 24 statements.

### 25 **OBJECTION NO. 22:**

26 Verigy objects to and moves to strike the entire Declaration of Defendant Romi Mayder  
 27 (Text omitted)

### 28 **Grounds for Objection:**

Verigy objects to and moves to strike the declaration because it is made in violation of Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any statement made on information and belief must state the basis therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further objects to the declaration because the statements within are irrelevant, in violation of F.R.E. 402. Verigy further objects to the statements because they constitute opinion testimony, do not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9<sup>th</sup> Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999). Moreover, “a witness should not ordinarily be allowed to express an opinion upon a subject matter concerning which he is not an expert.” *Phillips v. U.S.* 356 F.2d 297, 307 (9<sup>th</sup> Cir. 1965); F.R.E. 702. Verigy further objects that much of the testimony is inadmissible hearsay. F.R.E. 801. Verigy further objects that much of the evidence is cumulative and should be excluded pursuant to F.R.E 403 (exclusion of cumulative or relevant evidence based on grounds of prejudice, confusion or waste of time).

In light of objections five (5) through twenty-one (21) most of Defendant Romi Mayder's should be excluded. It is largely argument, with little or no facts based on personal knowledge, all of which violates Civil L.R. 7-5(b). What is not argument tends to be the hearsay interpretations of what other individuals have said or what other documents contain. There is also Mr. Mayder's speculation and opinions as to why Verigy and its counsel have done what they have done, none of which has the appropriate foundation.

The totality of these evidentiary problems justifies the exclusion of the entire declaration.

Dated: September 3, 2008

BERGESON, LLP

By: /s/  
Colin G. McCarthy

Attorneys for Plaintiff  
VERIGY US, INC.